

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-6124

WILLIAM STAPLES,

Petitioner - Appellant,

v.

WARDEN TERRY O'BRIEN, Warden at USP Complex,

Respondent - Appellee.

Appeal from the United States District Court for the Northern District of West Virginia, at Elkins. John Preston Bailey, District Judge. (2:16-cv-00018-JPB-JES)

Submitted: October 13, 2022

Decided: November 3, 2022

Before GREGORY, Chief Judge, and AGEE and HARRIS, Circuit Judges.

Affirmed as modified by unpublished per curiam opinion.

William Staples, Appellant Pro Se. Erin K. Reisenweber, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Martinsburg, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM

William Staples appeals the district court's order, issued on remand from this court, *see Staples v. O'Brien*, 740 F. App'x 275 (4th Cir. 2018) (No. 17-7606), dismissing his 28 U.S.C. § 2241 petition in which Staples sought to challenge his armed career criminal designation based on *Johnson v. United States*, 576 U.S. 591 (2015). Applying the principles as set forth in our recent decision in *Slusser v. Vereen*, 36 F.4th 590, 594-96 (4th Cir. 2022),* we agree with the district court that Staples has failed to satisfy the requirements of the savings clause of 28 U.S.C. § 2255(e). While we find no reversible error in the court's dismissal of Staples' § 2241 petition, because the district court lacked jurisdiction over Staples' petition, *Rice v. Rivera*, 617 F.3d 802, 807-08 (4th Cir. 2010), we modify the district court's order, *Staples v. O'Brien*, No. 2:16-cv-00018-JPB-JES (N.D.W. Va. Jan. 7, 2019), to reflect that the dismissal is without prejudice, *see Ali v. Hogan*, 26 F.4th 587, 600 (4th Cir. 2022) (recognizing that a dismissal based on a "defect in subject matter jurisdiction . . . must be one without prejudice" (internal quotation marks omitted)), and affirm the order as modified, *see* 28 U.S.C. § 2106. We deny Staples' motions for summary judgment and for summary disposition. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED AS MODIFIED

* We held this appeal in abeyance pending a decision in *Slusser*.